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Supreme Court, U.S.
FILED

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No. _____ OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Dr. ALVIN KANOFSKY , PhD. - PETITIONER-APPELLANT

Vs.

COMMISSIONER OF INTERNAL REVENUE SERVICE

RESPONDENT-APPELLEE

MR.MICHAEL MUKASEY – ATTORNEY GENERAL

Mr. RICHARD FARBER, ESQ.
Mr. JOHN SCHUMANN, ESQ.

Attorneys Tax Division, Department of Justice
Post Office Box 502
Washington, D.C.

ON PETITION FOR A WRIT OF CERTIORARI TO THE THIRD CIRCUIT COURT OF APPEALS FOR CASE 07-1860 IN PHILADELPHIA

DR. ALVIN S. KANOFSKY , Pro-Se
229 E. CHURCH STREET
BETHLEHEM, PA. 18018
610 –867-8064

SUPPLEMENT

Appendix C – Tax Court Decision

T.C. Memo, 2006 -79

UNITED STATES TAX COURT

ALVIN S. KANOFSKY, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 12547 – 04 Filed April 18, 2006

P, a full-time professor of physics at Lehigh University, filed 1996-2000 individual income tax returns in which he reported, on Schedule C, Profit of Loss From Business, zero gross receipts and substantital deductions from alleged business activities. R denied the 1996-98 Schedule C deductions on the ground that P was not engaged in any trade or business, and he denied a portion of the 1999 and 2000 Schedule C deductions on the ground that the disallowed expenses were unrelated to P's business activities. For all of the audit years, however, R allowed some of P's expense as deductions on Schedule A, Itemized Deductions. For 1997, R also determined that P is subject to the sec 6662, I.R.C., accuracy-related penalty.

1. Held: R's denial of business expense deductions under sec. 162(a), I.R.C., sustained.
2. Held, further, modifications to the deficiency determination for 1997-99 required in order to

correct computational errors.

3. Held, further, R's penalty against P for 1997 sustained, in part, under sec. 6662, I.R.C.

Alvin S. Kanofsky, pro se.

Frank J. Jackson, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

HALPERN, Judge: By notice of deficiency dated April 19, 2004 (the notice), respondent determined deficiencies in petitioner's Federal income tax and an accuracy-related penalty as follows:

Tax Year Ending Dec.31	Deficiency	Penalty Sec 6662(a)
1996	$14,506	
1997	15,437	3,087.40
1998	10,078	
1999	716	
2000	2,970	

By the petition, petitioner assigns error to respondent's deficiency determination for all years and his penalty determination for 1997. After concessions, [1] the issues for decision are whether petitioner is (1) entitled to deductions he claimed on the schedules C, Profit or Loss from Business, for each of the years at issue greater than those deductions allowed by respondent on either Schedule C or Schedule A, Itemized Deductions, and (2) liable for the section 6662(a) accuracy-related penalty for 1997.

Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the years at issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

FINDINGS OF FACT

Some facts are stipulated and are so found. The stipulation of facts with accompanying exhibits, is incorporated herein by this reference.

At the time the petition was filed, petitioner resided in Bethlehem, Pennsylvania.

Background

During the years at issue, petitioner was employed as a full-time professor of physics at Lehigh University.

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1 Petitioner concede respondent's inclusion in income of (1) $70 of unreported interest for both 1999 and 2000, and (2) an unreported State tax refund of $30 for 1999.

Petitioner earned a B.A. and an M.S. in physics and a PhD in experimental particle and nuclear physics from the University of Pennsylvania. During the years at issue, petitioner owned property at 30 East 3d Street in Bethlehem Pennsylvania (the Bethlehem property), an apartment in Mt. Pocono, Pennsylvania, and an apartment in North Shirley, Long Island. Petitioner did not lease any of the properties to tenants during 1996-98.

Petitioner's Returns

For each year in issue, petitioner filed a Form 1040, U.S. Individual Income Tax Return, showing zero taxable income and no tax due. On a Schedule C attached to each of those returns, petitioner listed as his principal business or profession "Research and development" and as the name of his business " A.S. K. Enterprises". Only the 1999 and 2000 Scehdules C listed a business address, which was 30 E. 3rd St., Bethlehem,PA 18015 (The Bethlehem property). All of the Schedules C report zero gross receipts and zero gross income, and they report the following amounts of total expenses (and resulting losses):

Year	Schedule C Expenses
1996	$72,786
1997	75,388
1998	80,675
1999	85,845
2000	80,020

The Notice

The notice disallows all of petitioner's 1996-98 reported schedule C expenses and a portion ($33,945 for 1999 and $40, 113 for 2000) of those expenses for 1999 and 2000. Those disallowances are based upon respondent's determination that petitioner failed to establish that he " he incurred or, if incurred, paid these amounts during the taxable years for ordinary and necessary business purposes".

The disallowance of petitioner's claimed Schedule C deductions for 1996-98 is based upon respondent's view that petitioner was not engaged in a trade or business during those years. For each of those years, however, respondent allows some of the disallowed Schedule C deductions (e.g. insurance, taxes, mortgage interest) as Schedule A deductions with respect to investment properties. For 1996 and 1997 respondent also allows Schedule A deductions for employee business expenses.

By his treatment of petitioner's Schedule C expenses for 1999 and 2000, respondent, in effect, concedes that, during those years, petitioner was carrying on a trade or business at the Bethlehem property, but not at his other two properties, which respondent continues to treat as investment properties. For 1999 and 2000, respondent allows Schedule C deductions for expenses associated with the Bethlehem property, but converts the portion of petitioner's Schedule C deductions for taxes and interest associated with the other two properties into Schedule A deductions.

The total additional Schedule A deductions allowed each year are as follows:

Year	Additional Schedule A Deductions
1996	$46,632
1997	20,933
1998	42,881
1999	23,235
2000	22,414

OPINION

I. Burden of Proof

Generally, a taxpayer in this Court bears the burden of proof. Rule 142 (a) (1). In certain circumstances, however, if the taxpayer introduces credible evidence with respect to any factual issue relevant to ascertain the proper tax liability, section 7491 shifts the burden of proof to the Commissioner. Sec. 7491 (a)(1); Rule 142(a) (2). Credible evidence is evidence the Court would find sufficient upon which to base a decision in the issue in favor of the taxpayer if no contrary evidence were submitted. See Higbee v. Commissioner, 116 T.C. 438, 442 (2001); Bernando v. Commissioner, T.C. Memo, 2004 – 199 n. 6. Section 7491 (2) imposes certain prerequisites to the application of section 7491 (a) (1), including that the taxpayer has complied with the requirements under the Internal Revenue Code " to substantiate any item". Sec 7491 (a) (2) (A).

As discussed infra, petitioner has failed to introduce credible evidence of his entitlement, under section 162, to the disallowed Schedule C deductions. Therefore, petitioner bears the burden of proof with respect to his entitlement to those deductions pursuant to rule 142 (a), a burden that, because of the absence of credible evidence of deductibility, petitioner cannot sustain. See Bernardo v. Commissioner, supra n.7

Under section 7491(c), respondent retains the burden of production (but not the overall burden of proof with respect to petitioner's liability for the accuracy-related penalty under section 6662(a). See Higbee v. Commissioner, supra at 446-447.

II. Petitioner's Schedule C Deductions

A. The Parties' Arguments

On brief, respondent summarizes his position as follows:

> Specifically, petitioner failed to offer any evidence other than his uncorroborated testimony, that he was engaged in a trade or business in taxable years 1996, 1997, and 1998, and (he) failed to produce adequate records which substantiate the disallowed Schedule C expenses in taxable years 1996-2000 * * *

Petitioner testified at trial and reiterates on brief that he has been engaged in various business activities for the past 25 years and that, as petitioner puts it on brief, during the 1996-2000 period, he was actively developing

ideas for companies, creating companies, and expanding on earlier research projects and ideas, developing patents, and protecting the company interests with law suits (sic), etc. as well as using his building for business purposes and improving the building."

B. Deductibility of Expenses Under Section 162 (a)

Section 162 (a) permits a deduction for "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business". Any amount claimed as a business expense must be substantiated, and the taxpayer is required to maintain records sufficient to establish that he or she is entitled to the claimed deduction Sec.6001 Hradesky v. Commissioner, 65 T.C. 87 (1975), affd. Per curiam 540 F. 2d 821 (5th Cir. 1976); sec. 1.6001-1(a), Income Tax Regs. In some circumstances, if a taxpayer established that he or she incurred a deductible expense but cannot substantiate it in full, the Court, may approximate the amount of an allowable deduction. See Cohan v. Commissioner 39 F.2d 540, 543-544 (2d Cir 1930) (the Cohan rule. The approximation, however, must have some evidentiary basis. Vanicek v. Commissioner , 85 T.C. 731 742-743 (1985). With respect to certain business and other expenses specified in section 274 (d) more stringent substantiation requirements apply. Those requirements supersede the application of the Cohan rule. See sec. 1.274 – 5T (a). Temporary Income Tax Regs., 50 Fed. Reg. 46014 (Nov. 6, 1985)

C. Discussion

1. 1996-98

During the trial, petitioner tried to place in evidence a number of documents in support of his argument that he incurred deductible business expenses during the years at issue. Most of those documents were not admitted into evidence, either because they constituted inadmissible hearsay, or because their admission into evidence would have violated the Court's standing pretrial order dated October 8 , 2004, in particular the so-called 14 day rule contained in that order, which states that, in the absence of good cause shown, the court may exclude from evidence any documents not "exchanged by the parties at least 14 days before the first day of the trial session."

The documents petitioner offered during the trail that were accepted into evidence indicate that petitioner did, in fact, ,make certain expenditures during the years at issue. [2] But there is no indication that those documents (copies of canceled checks, bank statements, receipts, correspondence, petitioner's handwritten notes, and other documentation) reflect expenditures that relate to any trade or business petitioner conducted during the 1996-98 taxable years.

Nor does petitioner's trial testimony support his

2 Respondant allowed some of those substantiated expenditures as Schedule A deductions.

position. Other than stating that he has "engaged in business activity for the past 25 years" and has been "consulting and developing companies over many years", and that he started back in 1980 with a company, ASK Enterprises and *** tried to develop the company over the years", his testimony generally describes the manner in which he was thwarted by third parties from pursuing any business activities.

Neither petitioner's exhibits nor his exhibits nor his testimony is sufficient to establish that he was engaged in a trade or business during the 1996-98 period. Moreover, petitioner's 1996-98 Schedules C reporting zero gross receipts from ASK Enterprises support a finding that he was not engaged in any trade or business during that period.

Assuming arguendo that petitioner made efforts to engage in a trade or business during the 1996-98 period and he held (and incurred expenses with respect to) his investment properties (and, in particular the Bethlehem property) in connection with those efforts , such activities do not amount to carrying on any trade or business" within the meaning of section 162 (a). See Richmond Television Corp. v. United States 345 F.2d 901, 907 (4th Cir. 1965), vacated and remanded on other issues 382 U.S. 68 (1965)

The uniform teaching of these several cases is that, even though a taxpayer has made a firm decision to enter into business and over a considerable period of time spent money in preparation for entering that business, he still

has not engaged in carrying on any trade or business" within the intendment of section 162(a) until such time as the business has begun to function as a going concern and performed those activities for which it was organized. (Fn. Ref. omitted)

Accord Hardy v. Commissioner, 93 T.C. 684, 687 (1989); Goodwin v. Commissioner 75 T.C. 424, 433 (1980), affd without published opinion 691 F. 2d 490 (3d Cir. 1982); Madison Gas & Elec. Co. v Commissioner, 72 T.C. 521, 566-567 (1979), affd. 633 F. 2d 512 (7th Cir. 1980)

On brief, petitioner attempts to flesh out his trial testimony by describing in great detail his efforts, beginning in 1980, at establishing various businesses. In support of these representations petitioner attached appendices to his briefs which contained many of the exhibits excluded at trial as well as additional material not presented at trial. Neither statements in briefs nor attachements to brief constitute admissible evidence, and neither may be considered by the Court. See Rule 143(b); Bialo v. Comissioner, 88 T.C. 1132, 1140 (1987); Kwong v. Commissioner, 65 T.C. 959, 967 n. 11 (1976); Perkins v. Commissioner, 40 T.C. 330, 340 (1963). [3]

2. 1999 and 2000

Petitioner's evidence of business use for his three properties is no more convincing for 1999 and 2000 than it

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3 Consistent with that principle, the appendices were detached from petitioner's brief and reply brief and returned to petitioner pursuant to an order of this Court dated July 7, 2005.

is for 1996-98. Nevertheless, as we said supra, respondent in effect concedes that petitioner used the Bethlehem property (but not his other two properties) in carrying on a trade or business during 1999 and 2000.

On petitioner's Schedules C for both 1999 and 2000, he claims 11 expense items. For 1999, respondent challenges portions of six of the items, and for 2000, he challenges portions of five. Two of those disallowed expenses (interest and taxes, presumably associated with his other two properties) are allowed as Schedule A deductions. Petitioner has failed to produce evidence that the amounts allowed as either Schedule A or Schedule C deductions were insufficient or that respondent's division of these deductions between Schedules A and C was improper.[4]

D. Conclusion

Petitioner has failed to introduce credible evidence (therefore, failed to carry his burden of proving) that he is entitled to deductions for the years at issue greater than those allowed by respondent.

III. Respondent's Computational Errors

A. 1997

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4 For 1999 and 2000, it is immaterial whether deductions are allowed on Schedules A or C because petitioner's Schedule A deductions for those years are not subject to reduction pursuant to either sec. 67 (2 – percent floor on miscellaneous itemized deductions) or sec. 68 (overall limitation on itemized deductions), nor do they generate alternative minimum tax.

The parties have stipulated that one of the disallowed Schedule C deductions that is allowed as a Schedule A deduction is $19,119 of mortgage interest. Respondent's allowance of that amount as a Schedule A deduction is also reflected in the examining agent's Form 886-A Explanation of Items, for 1997 (The 1997 Explanation of Items). The computation of the 1997 Schedule A deductions contained in the notice, under the heading "per exam" allows no interest expense deduction. As a result, the total allowable itemized deductions for 1997 (before reduction for the overall limitation on itemized deductions under section 68) is $24,798 rather than $43,915, which would be the amount if the $19,119 deduction for mortgage interest were included as a 1997 Schedule A deduction. In light of the 1997 Explanation of Items, we view respondent's stipulation that he "allowed on Schedule A*** interest in the amount of $19,119" as an admission that the notice inadvertently and improperly failed to include that amount in its computation of petitioner's Schedule A deduction for 1997. That error necessarily results in an overstatement of the petitioner's deficiency determination for 1997. [5]

B. 1998 and 1999

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5 Although the agent's 1996-1998 Forms 886-A, Explanation of Items (the only three in evidence), permit Schedule A mortgage interest expense decutions with respect to petitioner's three investment properties, the notice's computation of Schedule A deductions for 1998-2000 lists the additional interest expense as " Home Interest Expense.". That mischaracterization, however, has no impact on the deductible amounts.

Respondent made two minor computational errors for 1998 and 1999.

Petitioner's 1998 Schedule C lists total deductions of $80, 675. Both the notice and the agent's form 886-A for 1998 disallow the deduction of $80,765 of sSchedule C expenses. On account of that inadvertent transposition of numbers , the deduction disallowance is $90 greater than the actual deduction.

In the notice, the computation of each year's adjustment for increased Schedule A deductions properly reduces Schedule A deductions "per Exam" by petitioner's Schedule A deductions "per return". For 1999, however, the notice computation mistakenly fails to offset the Schedule A deductions "per exam', which include a $250 charitable contribution that had been reported on petitioner's 1999 Schedule A as filed, by the amount of that deduction.[6] Thus, the 1999 adjustment for increased Schedule A deduictions should be $22, 985, not 23, 235 as stated in the notice.

C: Conclusion

The correction of the foregoing computation errors will be reflected in the rule 155 computation in this case.

IV Accuracy-Related Penalty for 1997

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6 The amount shown as "per return" total itemized deductions does not include the amount shown for "contributions", $250.

A. Applicable Law

Section 6662 provides for an accuracy-related penalty (the penalty) in the amount of 20 percent of the portion of any underpayment attributable to, among other things, negligence ar intentional disregard of rules or regulations (without distinction, negligence), any substantial understatement of income tax, or any substantial valuation misstatement , See Sec 6662(b) (1)-(3). Respondent determined the penalty against petitioner for 1997. Although the notice states that the respondent bases his imposition of the penalty upon one or more of the three above reference grounds (and although the 1997 underpayment respondent determined appears, on its face, to be a "substantial understatement" within the meaing of section 662 (d) (1)), the only issue respondent raised on brief is whether petitioner's 1997 underpayment is attributable to " negligence or disregard of rules or regulations." [7]

Section 6662 (c) defines the term "negligence", for purposes of section 6662 as including "any failure to make a reasonable attempt to comply with the provisions of this title", and the term " disregard" as including " any careless, reckless, or intentional disregard." Negligence has been generally defined as lack of due care or failure to do what a reasonably prudent person would do under

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7 Therefore, we consider respondent to have abandoned the substantial understatement argument. See Bernstein v. Commissioner, 22 T.C. 1146, 1152 (1954), affd. 230 F.2d 603 (2d Cir. 1956); Lime Cola Co. v. Commissioner, 22 T.C. 593, 606 (1954); Roberts v. Commissioner, T.C. Memo, 1996-225.

like circumstances. See, e.g., Hofstetteer v. Commissioner, 98 T.C. 695, 704 (1992). It also includes any failure by the taxpayer to keep adequate books and records or to substantiate items properly." Sec 1.6662-3(b) (1). Income Tax Regs.

Section 6664 (c) (1) provides that the accuracy-related penalty shall not be imposed with respect to any portion of an underpayment if it is shown that there was reasonable cause for that portion and the taxpayer acted in good faith with respect to that portion.

The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case by case basis, taking into account all pertinent facts and circumstances. * * * Circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of * * * law that is reasonable in light of all of the facts and circumstances, including the experience, knowledge, and education of the taxpayer. * * *

Sec. 1.6664 – 4(b) (1), Income Tax Regs

B. Analysis and Conclusion

On brief, respondent alleges that petitioner's failure to maintain and produce adequate records of his alleged business activities shows both negligence and intentional disregard of the section 6001 requirement to kept permanent records to establish his gross income and deductions. Respondent also argues that " petitioner has not

offered nay evidence * * * that he acted reasonable and in good faith in filing his 1997 income tax return." Petitioner disagrees.

From his testimony, we infer that, both before and during the years at issue, petitioner was seeking to use one or more of his three investment properties in the conduct of a trade or business. Respondent does not challenge[8] that testimony, and we have no reason to disbelieve it.Petitioner's error was to treat the expenses associated with his attempts to establish a business operation at one or more of his properties (essentially pre-startup expenses since they have not been shown to relate to the future commencement of any specific trade or business) as section 162 (a) ordinary and necessary business expenses, deductible on Schedule C.

We have sustained the tax deficiency for 1997 on the basis of case law (including decisions of this Court) holding that section 162 (a) applies only to the expenses of an operating business. It is clear, however, that the courts have not acted uniformly in dealing with the issue of whether and in what circumstances pre-operating expenses may be treated as currently deductible business expenses. In some case,(contrary to the above-cited decisions of this Court) courts have permitted section 162 (a) business expense deduction for preoperating expenses. See, eg. 379 Madison Ave., Inc. v. Commissioner, 60 F 2d 68 (2d Cir.

8 Petitioner's testimony is consistent with the examining agent's determination to treat certain of petitioner's Schedule C expenses for 1997 as either deductible (on Schedule A) or capitalizable expenses associated with "rental property".

1932 (a net loss attributable to rent, real estate taxes, and interest paid during the construction of a building first ready for occupancy by tenants in a subsequent taxable year held deductible as part of a net loss from a "business regularly carried on"), revg. And remanding 23 B.T.A. 29 (1931); Blitzer v. United States, 47 AFTR 2d 81-1005, at 81-1018, 81-1 USTC par. 9262, at 86,633 (Ct. Cl. 1981) (in dicta, the court states that preoperating expenses that are recurring in nature and do not provide benefits extending beyond the taxable year may be deductible under section 162); United States v. Manor Care, Inc., 490 F Supp. 355, 362 (D.Md. 1980) (preoperating expenses incurred by a nursing home taxpayer in the same taxable year in which the required nursing home licenses were later issued and operations were later commenced held to be deductible business expenses under section 162(a) in the year incurred); [9]see also Carter-Colton Cigar Co. v. Commissioner, 9 T.C. 219, 221 (1947) (vacant lot intended as the site for a warehouse and store building to be used in the taxpayer's tobacco business, the construction of which was abandoned due to adverse economic circumstances, held to constitute ad asset " used in the trade or business of (the taxpayer)" thereby giving rise to ordinary rather than capital losses on the sale of the lot).

The foregoing cases all involve expenses (or the acquisition and sale of property) preparatory and related to a specific business (or business use) that is either

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9 See Goodwin v. Commissioner, 75 T.C. 424, 433 n. 8 (1980), affd. Without publishing opinion 691 F2d 490 (3rd Cir. 1982), wherein we question the District Court's analysis.

certain or anticipated to commence in the near future. In contrast, the evidence in this case indicates that petitioner's 1997 expenses were incurred before any firm expectation of a specific business use for the petitioner's investment properties. That is a factual distinction that one might reasonably expect an experienced tax professional to make,but not a physics professor, even one with a PhD.[10] Therefore, we find the case law permitting a business expense deduction for preoperating expenses to be indicative of the fact that petitioner's position was not unreasonable and, therefore, not negligent, and that, in any event, petitioner acted in good faith and with reasonable cause in treating the expenses listed in his 1997 Schedule C as ordinary and necessary business expenses under section 162 (a). See sec. 1.6664-4(b) (1), Income Tax Regs.; see also Keller v. Commissioner, T.C. Memo. 1996-300 (college professor who improperly claimed a travel expense deduction for a sabbatical trip during which he engaged in study unrelated to the stated sabbatical purpose acted in good faith and was not liable for the accuracy-related penalty where there were no regulations or other forms of clear-cut guidance specifying the reach of section 274 (m) (2), which denies a deduction for the expense of travel as a form of education).

Nor do we agree with the respondent that negligence and intentional disregard are shown by petitioner's alleged failure to maintain and produce books and records to

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10 There is no evidence the petitioner has any training or background (other than in the preparation of his own returns) in the area of Federal income taxation.

support his claimed Schedule C deductions as required by section 6001. It is not always necessary that a taxpayer maintain a formal set of readily auditable books in order to satisfy the books and records requirement of section 6001 and section 1.6001-1(a), Income Tax Regs., See Westby v. Commissioner, T.C. Memo. 2004-179. At trial, petitioner presented documentary evidence, by category, of a portion of his claimed 1997 expenses. Moreover, the examining agent's 1997 Explanation of Items treats as either deductible on Schedule A, capitalizable, or nondeductible "Personal or estate expense" all but $8,292 of petitioner's total 1997 Schedule C expenses, which indicates that petitioner substantiated all but $8,292 of those expenses during the audit.

Petitioner claimed 1997 Schedule C expenses of $75, 388 and at trial, offered documentary evidence that, at best, substantiates the expenditure of approximately one-half of that amount. That lack of substantiation in the record supports the examining agent's determination that petitioner's Schedule C deductions included $8,292 of unsubstantiated expenses, and we so find. Therefore, in accordance with section 1.6662-3(b) (1), Income Tax Regs. (negligence includes any failure by the taxpayer **** to substantiate items properly"), we sustain the negligence penalty with respect to petitioner's 1997 underpayment attributable to $8,292 of unsubstantiated expenses.

Decision will be entered Under Rule 155

UNITED STATES TAX COURT

WASHINGTON, DC 20217

ALVIN S. KANOFSKY Petitioner v. COMMISSIONER OF INTERNAL REVENUE Respondent	Docket No. 12547-04

DECISION

On October 17, 2006, the Court filed respondent's computation for entry of decision. On November 8, 2006, the Court filed petitioner's objection to respondent's computation for entry of decision.

Pursuant to the determination of this Court as set forth in its Memorandum Findings of Fact and Opinion (T.C. Memo 2006 – 79) filed April 18, 2006, and incorporating herein the facts recited in respondents computation as the findings of the Court, it is

ORDERED AND DECIDED: That there are deficiencies and a penalty due from petitioner as follows:

Year	Deficiency	Addition to Tax/Penalty I.R.C. Sec. 6662 (a)
1996	$14, 506	
1997	$10, 109	$431
1998	$10, 055	
1999	$716	
2000	$2,970	

(Signed) James S. Halpern

James S. Halpern
Judge

Entered: Nov 17 2006

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